IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8216 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI HASAN MOHMMANDBHAI - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MR KETAN A DAVE for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
MS ARCHANA RAVAL, AGP for Respondent(s) : 1 - 2.
DS AFF.NOT FILED (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/04/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged the order dated 5th October, 1991 as well as the order dated 14th October, 1991 by which the licence granted to the petitioner for running a hotel was modified to the

extent of reducing the time limit from 1 O' clock at night to 11 'O clock at night. In the order dated 14.10.91 while communicating the said decision, the Authority did not indicate any reason for such a change. However, in the communication dated 5th October, 1991, it is stated that on account of traffic situation and finding that some undesirable elements are gathering at the hotel due to which there is possibility of development of sensitive situation, the time limit for running the hotel under the licence granted to it is reduced as stated above.

2. The petitioner has challenged the said communication by filing the present petition mainly contending that there is no justification or basis for the above conclusion and that the essential condition of the licence could not have been modified without following any procedure.

3. While admitting the petition, this Court granted stay against the said modification by granting interim relief in terms of para 6(A) and (B) of the petition. Learned advocate Shri Dave for the petitioner further pointed out that upon expiry of the term of licence, the respondents were pleased to renew the licence for a further period of 10 years by order dated 5th January

1999. In the said extension order also, on account of the stay granted by this Court, the petitioner is permitted to run the hotel till 1 'O clock at night. Learned advocate for the petitioner submitted that during the pendency of the petition, the petitioner has been enjoying the right to run the hotel till 1 'O clock at night and no untoward incident has taken place. He further submitted that it is difficult to understand how the traffic situation can be the basis for passing the impugned order since as the night progresses, the vehicular traffic on the road would ease.

4. Learned AGP Ms.Archana Raval submitted that because of assignment of the Court to her at the last minute, she does not have instructions in the matter. In any case, no reply has been filed by the respondents though the petition is pending since the year 1991. However, to a query put by the Court to her whether there is any provision under the law which would limit the time upto which a hotel can be run, she submitted that the same has to be decided individually as per the discretion of the authorities.

5. Considering the above aspects of the matter, it can be seen that though initially licence was granted to run

the hotel till 1 'O clock, the same was sought to be reduced upto 11 'O clock at night. However, by virtue of the interim order granted by this Court on 6.11.91, the decision of the Authorities came to be stayed. The petitioner, therefore, enjoyed the facility of running the hotel till 1 'O clock during the pendency of the petition. The respondents have not brought to the notice of the Court any untoward incident which happened on account of the petitioner running the said hotel till 1 'O clock at night. The renewed licence which operates for a period of ten years from 5th January 1999 also permits the petitioner to run the hotel till 1 'O clock at night, of course, on account of the interim order passed by this Court.

6. At this distant point of time, I do not see any reason to permit the respondents to implement the decision which was taken way back in the year 1991 probably on account of the situation obtaining at that point of time.

7. In the result, the petition is allowed. The impugned communications at Annexures B and BB are quashed. It will be open to the respondents to review the situation while considering the question of renewal of the licence of the petitioner if the situation arises.

Allowing of this petition, however, would not come in the way of the respondents to reconsider the situation in case there are strong reasons to do so even during the currency of the licence period for valid reasons and after hearing the petitioner in this behalf.

8. Subject to the aforesaid observations, the petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)